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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 GREGORY COFFENG, MARK GLASER
13 and JORDAN WILSON, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 VOLKSWAGEN GROUP OF AMERICA,
17 INC.,

18 Defendants.
19

Case No. 17-cv-01825-JD

**DECLARATION OF CAMERON R.
AZARI, ESQ. ON SETTLEMENT
NOTICE PLAN**

JUDGE: Hon. James Donato
CRTRM: 11, 19th Floor

1 I, Cameron R. Azari, Esq., hereby declare and state as follows:

2 1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set
3 forth herein, and I believe them to be true and correct.

4 2. I am a nationally recognized expert in the field of legal notice and I have served as
5 an expert in dozens of federal and state cases involving class action notice plans.

6 3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”); a firm that
7 specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal
8 notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc.
9 (“Epiq”).

10 4. Hilsoft has been involved with some of the most complex and significant notices
11 and notice programs in recent history. With experience in more than 400 cases, notices prepared
12 by Hilsoft have appeared in 53 languages with distribution in almost every country, territory and
13 dependency in the world. Judges, including in published decisions, have recognized and
14 approved numerous notice plans developed by Hilsoft, which decisions have always withstood
15 collateral reviews by other courts and appellate challenges.

16 **EXPERIENCE RELEVANT TO THIS CASE**

17 5. I have served as a notice expert and have been recognized and appointed by courts
18 to design and provide notice in many of the largest and most significant cases, including: *In re:*
19 *Volkswagen “Clean Diesel” Marketing, Sales Practices and Product Liability Litigation (Bosch*
20 *Settlement)*, MDL No. 2672 (N.D. Cal.) (Comprehensive notice program within the Volkswagen
21 Emissions Litigation that provided individual notice to more than 946,000 vehicle owners via
22 first class mail and to more than 855,000 via email. A targeted internet campaign further
23 enhanced the notice effort. Individual notice successfully delivered to more than 97% of the
24 class); *Callaway v. Mercedes-Benz USA, LLC*, Case No. 14-cv-02011 JVS (DFMx) (C.D. Cal.)
25 (Individual mailed notice to more than 647,000 class members with over 96.5% of the mailed
26 notice successfully delivered); *Falco et al. v. Nissan North America, Inc. et al.* Case No. 2:13-cv-
27 00686 DDP (MANx) (C.D. Cal.) (Individual mailed notice to more than 575,000 class members
28 with over 99% of the mailed notice successfully delivered). Numerous other court opinions and

1 comments as to our testimony, and opinions on the adequacy of our notice efforts, are included in
2 Hilsoft's curriculum vitae included as **Attachment 1**.

3 6. In forming my expert opinions, I and my staff draw from our in-depth class action
4 case experience, as well as our educational and related work experiences. I am an active member
5 of the Oregon State Bar, receiving my Bachelor of Science from Willamette University and my
6 Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the
7 Director of Legal Notice for Hilsoft since 2008 and have overseen the detailed planning of
8 virtually all of our court-approved notice programs since that time. Prior to assuming my current
9 role with Hilsoft, I served in a similar role as Director of Epiq Legal Noticing (previously called
10 Huntington Legal Advertising). Overall, I have over 19 years of experience in the design and
11 implementation of legal notification and claims administration programs having been personally
12 involved in well over one hundred successful notice programs.

13 7. The facts in this declaration are based on what I personally know, as well as
14 information provided to me in the ordinary course of my business by my colleagues at Hilsoft and
15 Epiq.

16 OVERVIEW

17 8. This declaration will describe the Settlement Notice Plan ("Notice Plan" or
18 "Plan") and notices (the "Notice" or "Notices") proposed here for the settlement of *Coffeng v.*
19 *Volkswagen Group of America, Inc.*, Case No. 17-cv-01825-JD in the United States District
20 Court for the Northern District of California.

21 9. Data will be available to provide individual notice to virtually all Settlement Class
22 members. The data (in the form of physical addresses and email addresses) will be obtained from
23 HIS Automotive, driven by Polk ("Polk") and potentially combined with data from the
24 Defendant. All lists will be combined and de-duplicated in order to find the most likely current
25 address for each Settlement Class member. The individual notice effort will be supplemented by
26 a targeted, supplemental media campaign.

27 10. In my opinion, the proposed Notice Plan is designed to reach the greatest
28 practicable number of Settlement Class members through the use of individual notice and

supplemental media. In my opinion, the Notice Plan is the best notice practicable under the circumstances of this case and satisfies the requirements of due process, including its “desire to actually inform” requirement.¹

NOTICE PLANNING METHODOLOGY

11. Federal Rules of Civil Procedure 23 directs that the best notice practicable under the circumstances must include “individual notice to all members who can be identified through reasonable effort.”² The proposed notice program here satisfies this requirement. A Notice tailored to the potential owners/lessees of the vehicles included in the Settlement will be sent via first class mail. Address updating (both prior to mailing and on undeliverable pieces) and re-mailing protocols will meet or exceed those used in other class action settlements.³ Where email addresses are available, an Email Notice will also be sent. Based on our experience in prior automotive settlements, we expect to successfully deliver notice to more than 95% of the Settlement Class.

12. Notices will appear online on *Facebook* and *Instagram* specifically targeted to Audi and Volkswagen owners. Coverage will be further enhanced by the sponsored search listings and a case website.

NOTICE PLAN DETAIL

13. Class Notice shall be disseminated pursuant to the plan and details set forth below and referred to as the “Notice Plan.” The Notice Plan was designed to provide notice to the following Settlement Class (the “Class”):

“All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in Section I (R) of the Agreement, in the United States of America and Puerto Rico.”

¹ “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

² FRCP 23(c)(2)(B).

³ If email addresses become available, supplemental email notice may also be sent.

Excluded from the Settlement Class are (a) anyone claiming personal injury, property damage (other than damage to the Settlement Class Vehicle itself) and/or subrogation; (b) all Judges who have presided over the Actions and their spouses; (c) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (d) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant have a controlling interest; (e) anyone acting as a used car dealer; (f) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (g) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class.

I understand "Settlement Class Vehicles" to mean:

The model and model year VW and Audi vehicles designated by VIN on Exhibit 4 of the Settlement Agreement, imported and distributed by Defendant Volkswagen Group of America, Inc. for sale or lease in the United States and Puerto Rico.

NOTICE PLAN

Individual Notice – Direct Mail

14. A comprehensive list of potential Class Members physical addresses exists – consisting of the current and former owners and lessees of the Audi and Volkswagen vehicles included in the settlement. The database will be acquired from Polk and, if available, supplemented by other sources. All data will be de-duplicated and updated in order to find the most likely current address for each current and former vehicle owner/lessee. This data will be used to provide individual notice to virtually all Settlement Class members.

15. The mailed notice packet will consist of an 8-image Notice that clearly and concisely summarize the Settlement and a Claim Form (the "Notice Packet"). Each will direct the recipients to a website dedicated specifically to the Settlement where they can access additional information and easily file a claim. The Notice Packet will be sent by the United States Postal Service ("USPS") first class mail.

16. Prior to mailing, all mailing addresses provided will be checked against the National Change of Address ("NCOA") database maintained by the USPS.⁴ Any addresses that are

⁴ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists

1 returned by the NCOA database as invalid will be updated through a third-party address search
 2 service. In addition, the addresses will be certified via the Coding Accuracy Support System
 3 (“CASS”) to ensure the quality of the zip code, and verified through Delivery Point Validation
 4 (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for
 5 the industry and for the majority of promotional mailings that occur today.

6 17. Notice Packets returned as undeliverable will be re-mailed to any new address
 7 available through postal service information, for example, to the address provided by the postal
 8 service on returned pieces for which the automatic forwarding order has expired, but which is
 9 still during the period in which the postal service returns the piece with the address indicated, or
 10 to better addresses that may be found using a third-party lookup service (“ALLFIND”,
 11 maintained by LexisNexis). Upon successfully locating better addresses, Notices will be
 12 promptly re-mailed.

13 18. Additionally, a Notice and Claim Form will be mailed to all persons who request
 14 one via the toll-free phone number or by mail. The Long Form Notice will also be available to
 15 download or print at the website. Copies of the proposed Notice Packet are included with the
 16 materials filed by Parties.

17 *Individual Notice - Email*

18 19. An Email Notice will also be sent to all potential Settlement Class members for
 19 whom a facially valid email address is available from Polk. The Email Notice content will be
 20 substantially identical in content to the Notice via mail. The Email Notice will use an embedded
 21 html text format. This format will provide easy to read text without graphics, tables, images and
 22 other elements that would increase the likelihood that the message could be blocked by Internet
 23 Service Providers (ISPs) and/or SPAM filters. Each Email Notice will be transmitted with a
 24 unique message identifier. If the receiving email server cannot deliver the message, a “bounce
 25 code” will be returned along with the unique message identifier. For any Email Notice for which a
 26 bounce code is received indicating that the message was undeliverable, at least one additional

27
 28 submitted to it are automatically updated with any reported move based on a comparison with the
 person’s name and known address.

attempt will be made to deliver the Notice by email. For Settlement Class members for whom both a physical address and an email address are available, both a mailed Notice Packet and an Email Notice will be sent.

20. The Email Notice will include an embedded link to the case website. By clicking the link, recipients will be able to easily access the Long Form Notice, Settlement Agreement, online Claim Form and other information about the Settlement.

Social Media Banner Notices

21. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable reach of persons covered by a settlement. According to 2018 GfK MRI syndicated research, 96% of adults who own an Audi or Volkswagen have accessed the internet in the last 30 days. Accordingly, we will run online banner notice ads on social media that Settlement Class members may visit regularly. Banner ads are image-based graphic displays available on desktops and mobile devices. These ads are used in legal noticing to notify people of a settlement relevant to them. The text of the banner advertisements will allow users to identify themselves as potential Settlement Class members and directly link them to the case website for more information.

22. Specifically, banner notices measuring 254 x 133 pixels will be placed on *Facebook* and *Instagram*. Banners notices will target adults who have identified an interest in “Volkswagen” and/or “Audi.” *Facebook* is the leading social networking site in the world. Banners will run on *Facebook* and *Instagram* for 30 days.

Sponsored Search Listings

23. To facilitate locating the case website, sponsored search listings will be acquired on the three most highly-visited Internet search engines: *Google*, *Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations such as “Volkswagen Settlement” or “Coffeng Audi Lawsuit,” the sponsored search listing will display either at the top of the page prior to the search results or in the upper right hand column.

Case Website

24. A neutral, informational settlement website will be established to reflect the settlement of the case. Settlement Class members will be able to obtain additional information and documents including the Detailed Notice, Settlement Agreement, Preliminary Approval Order a list of Frequently Asked Questions and Answers and any other information that the parties agree to provide or that the Court may require. Settlement Class members will be able to file an online claim. The website will also include information on how potential Settlement Class members can opt-out of the Settlement if they choose. The website address will be prominently displayed in all printed notice documents.

Toll-free Telephone Number and Postal Mailing Address

25. A toll-free number will be established. Callers will be able to hear an introductory message. Callers will then have the option to continue to get information about the Settlement in the form of recorded answers to frequently asked questions. Callers will also have an option to request a Long Form Notice by mail. During normal business hours, callers will also have the option to speak to a live operator.

26. A postal mailing address and email address will be provided, allowing Settlement Class members the opportunity to request additional information or ask questions via these channels.

PERFORMANCE OF THE NOTICE PROGRAM

Reach

27. Based on our experience in previous automotive settlements, we reasonably expect to deliver individual notice to over 90-95% of the Settlement Class. This expectation is specifically informed by our recent experience in the following settlements which also used vehicle VIN information to access data from Polk (cases also listed above in the Experience section):

- *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)*, MDL No. 2672 (N.D. Cal.) 97% of the class reached with individual notice;

- *Callaway v. Mercedes-Benz USA, LLC*, Case No. 14-cv-02011 JVS (DFMx) (C.D. Cal.) 96.5% of the class reached with individual notice; and
- *Falco et al. v. Nissan North America, Inc. et al.* Case No. 2:13-cv-00686 DDP (MANx) (C.D. Cal.) 99% of the class reached with individual notice.

28. Reach will be enhanced further by the targeted online social media, sponsored search listings and the case website.

29. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.⁵ Here we have developed a notice plan that will deliver notice to the Settlement Class at the very highest end of this range. These statistics reinforce the fact that the Notice Plan is broad in scope and is designed to reach the greatest practicable number of Settlement Class members.

CONCLUSION

30. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements will be met in this case.

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⁵ Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), p. 3.

1 31. Our notice effort follows the guidance for how to satisfy due process obligations
2 that a notice expert gleans from the United States Supreme Court's seminal decisions, which are:
3 a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably
4 calculated to do so:

5 A. "But when notice is a person's due, process which is a mere gesture is not due
6 process. The means employed must be such as one desirous of actually informing the
7 absentee might reasonably adopt to accomplish it," *Mullane v. Central Hanover Trust*, 339
8 U.S. 306, 315 (1950).

9 B. "[N]otice must be reasonably calculated, under all the circumstances, to apprise
10 interested parties of the pendency of the action and afford them an opportunity to present
11 their objections," *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at
12 314.

13 32. The Notice Program will provide the best notice practicable under the
14 circumstances of this case, conforms to all aspects of Federal Rules of Civil Procedure 23, and
15 comports with the guidance for effective notice articulated in the Manual for Complex Litigation
16 4th Ed.

17 33. The Notice Plan schedule will afford enough time to provide full and proper notice
18 to Settlement Class members before any opt-out and objection deadline.

19 34. At the conclusion of the Notice Plan, we will provide a final report verifying its
20 effective implementation.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed on
22 June 5th, 2019.

23
24 
25 _____
26 Cameron R. Azari, Esq.
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28